Supreme Court, U. S.
FILED
DEC 7 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

November Term, 1979

No 79-884

STANLEY V. TUCKER,
Petitioner

-v-

HARTFORD NATIONAL BANK & TRUST CO

PETITION FOR A WRIT OF CERTIORARI TO
THE CONNECTICUT SUPREME COURT

STANLEY V. TUCKER
petitioner
Box 35
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IN THE

SUPREME COURT OF THE UNITED STATES

November Term, 1979

No _____

STANLEY V. TUCKER,

Petitioner

-v-

HARTFORD NATIONAL BANK & TRUST CO,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE CONNECTICUT SUPREME COURT

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Conn. Sup Court entered July 24th, 1979 in the above entitled action, infra Appendix A2-9. A timely Petition for Re-Hearing was filed and denied September 19, 1979. Stay Order made Nov 1, 1979.

CITATION TO OPINIONS BELOW

The opinion of the Connecticut Supreme Court is reported 175 Conn___, Conn. Law Journal Vol 41 No 4 and printed in the Appendix infra A2-9.

JURISDICTION

The judgment of the Connecticut Supreme Court denying re-hearing was entered on September 19, 1979. The jurisdiction of this Court is invoked under 28 USC 1257 (3).

QUESTIONS PRESENTED

1. Are Connecticut Practice Book Sections 506- 510 authorizing rent receiverships unconstitutional and void on their face:
   a. Made without jurisdiction
   b. Violate Federally protected mortgage contract provisions
   c. permit appointment on "hearsay"
   d. Deny substantive due process and equal protection

2. Are Connecticut Practice Book Sections 506-510 authorizing rent receiverships unconstitutional and void as applied by the State Courts of Connecticut:
   a. Property owners who protest violations of federal rights are "witch-hunted"
   b. Attorneys inexperienced at rent managment are appointed and given "attorneys fees" twenty times the fees charged by competent managers
   c. No controls exercised by state officials officials
   d. Used to depreciate market value so "strict foreclosure" gives equity to bank

3. Is the state court order made June 24, 1977 denying defendant the "right to walk or talk" unconstitutional and void

4. Is the order for attorneys fees made in the State Courts void as same order vacated October 1979 by Honorable Second C.A.

MAJOR QUESTION FOR REVIEW

The State Courts of Connecticut have interpreted for the first time federal questions of state wide importance in a manner contrary to the decisions of this Honorable Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This cases involves a denial of substantive due process and equal protection of the laws, the fifth and fourteenth amendments to the U. S. Constitution as set forth in the Appendix C, infra.

This cases involves Connecticut state Pratice Book Sections 506 - 510 challenged as void and unconstitutional as set forth in Appendix D, infra:

PB 506 Appointment of Rent Receivers
PB 507 Bond
PB 508 Discharge
PB 509 Orders
PB 510 Reports

STATEMENT OF THE CASE

In this action the appellant took out a real estate mortgage for $235,000 on a 32 family apartment building in 1966 and paid all payments on mortgage on time until in October 1975 acting under contract mortgage clauses permitting a rent receivership, without any court order, and in face of protests from appellant that the mortgage current began to seize rents while the property was in good condition, almost full of tenants and rents being paid on time.

The rent seizures so carelessly carried out that soon 14 vacancies developed and about 8 tenants never paid any rent and the bank abandoned collections about April 1976 without any attempt to comply with or carry out any of the contract imposed duties to pay bills such as taxes, oil, mortgage, electric, etc. - let alone ignoring contract duty to make monthly reports.

With the property abandoned by the banks rent receiver in April 1976 appellant began restoring and by December 1976 repairs completed and vacant apartments again rented.

During the fall of 1976 appellant entered into a notarized agreement to pay all taxes past and future at $1,000/month, See B 11.

In 1976 with appellant current on his agreement with tax collector and using as grounds the "default" created by its own private rent collector who abandoned premises in April 1976 bank started a foreclosure action.

In May 1977 over protests of appellant that property again full of tenants and in good condition the courts appointed an attorney without experience at rent receiverships over an experienced property manager selected by appellant. At no time was appellant given an opportunity to be appointed rent receiver on same terms as the banks rent receiver.

The Court appointed rent receiver posted a nominal $5,000 bond using his junior law partner as surety who when trouble started over collections not being made packed his law books and skipped out of town.

Almost immediately after May 1977 when the attorney took over as rent receiver great waste and neglect took place increasing to 23 vacancies in spring of 1979. Intense inflation and shortage of housing has now filled the vacant apartments.

The property was appraised for $435,000 the month before receiver took over and last appraised in present condition Sept 1979 by three court appointed appraisers for $375,000.

Neil Atlas, counsel for Hartford N B & T Co repeatedly appeared in court to demand "strict foreclosure" citing as grounds for "giving the property to the bank" the waste and neglect caused by the rent receiver appointed by the bank. However, the equity was so high on a $160,000 mortgage balance that foreclosure by sale was ordered B 17.

In June 1977 appellant filed a number of motions in the state courts to hold the negligent rent receiver in contempt, to terminate the frent receivership, to forfeit the bond and increase the bond. All of these were summarilly denied by the court and the order of June 24, 1977 B 5, made denying to appellant without notice, testimony or hearing.....

"<u>the right to walk or talk</u>"

Notwithstanding again in the fall of 1977 appellant brought similar motions again denied by the court. Since the reports by the rent receiver showed embezzlement and falsified billings in January 1978 appellant filed a series of motions showen in Appendix B6 - B 10 all of which were denied by the court.

Having been repeatedly rebuffed by the courts appellant filed no more motions and receiver abandoned filing reports although news leaked out of large embezzlements and thefts.

The order .."not to walk or talk".. effectively imprisoned appellant from substantial personal property over which the state court had no jurisdiction since it was not included in the mortgage or foreclosure.

Because of large losses caused by the rent receivership the appellant filed a Ch 12 Real Property Arrangment in the bankrupcy Court. The Bankruptcy Court ruled that ..."attorneys are incompetent as rent receivers".... B 7.

Neil Atlas appeared for the same and another bank in ban kuptcy court and in what appears a case of first impression applied for fees for time in foreclosure state courts (apparently to get bankruptcy court approval) and received an order effectively doubling the fees granted. This order was generously again in a matter of first impression included by the state court as part of its foreclosure fees as "bankruptcy court fees and costs."

Both the state court and federal court awards of the same fees were taken on appeal and in Sept 19, 1979 the Connecticut Sup Court denied re-hearing affirming this strange award of fees although the bankruptcy action was dismissed for failure to get creditor consents.

With stunning timing only weeks later the Honorable Second Circuit Court of Appeals vacated the federal award as being without foundation, See E 1. thus reversing the Conn Supreme Court.

THIS 2nd C.A. DECISION IS POWERFUL GROUNDS FOR GRANTING THIS PETITION FOR CERTIORARI AND REMANDING BACK TO THE STATE COURTS FOR CONFORMANCE TO 2nd CA DECISION !

Appellant brought counter-claims for the banks breach of rent receivership mortgage contract terms and claimed he proved his case but counter-claims disregarded by state court.

SUBSTANTIAL REASONS FOR GRANTING THE WRIT

I. PRACTICE BOOK SECTIONS 506-510 ARE UNCONSTITUTIONAL ON THEIR FACE

This Honorable Court has over the years in its decisions set out standards to guide the application of due process and equal protection principles that show as a matter of law on their face PB 506-510 should be rejected as void & unconstitutional.

A. P.B. 506 - 510 ARE OUTSIDE THE PERMISSIVE JURISDICTIONAL LIMITS GIVEN TO THE Conn. SUPREME COURT IN G. S. 51-14

G.S. 51-14 "The judges of the supreme court shall adopt rules regulating pleading, practice and procedure in judicial proceedings in courts. Such rules shall not abridge, enlarge or modify any substantive right nor the jurisdiction of any of the courts"

The rules complained of herein, PB 506-510 hardly fit the above limitations of "regulating practice" and do exactly what is prohibited..."abridge substantive rights... and enlarge the jurisdiction of the superior court.

Indeed the enlargement of the jurisdiction of the superior court is so far that it abridges and violates rights, priviledges and immunities federally protected by the Constitution and the Amendments thereto and by the decisions of this Honorable Court.

This court repeatedly rejected rules of court adopted by State Supreme Courts that violated federal rights or abridge them.

Barker v Wingo
407 US at 528
1972

"We reject therefore the rule that a defendant who fails to demand a speedy right forever waives his right"

But Connecticut is well known as a state that the U. S. Supreme Court has had in the past to strike down rules of practice and statutes on the grounds that they deny due process of law and equal protection of the laws. Perhaps one of the most recent and best known is:

Boddie v Connecticut
401 US 371 1971

"The due process clause of the 14th Amendment prevents a state from pre-empting the right to dissolve the marriage relationship without affording all citizens access to the means it has prescribed for doing so.

The Honorable Justices of the Conn. Sup Court responded with a model section added to the Conn. Practice Book to protect this federal right.

P. B. 50 "In any case a plaintiff without a waiver of costs will be deprived of the right to bring an action he shall file an application for waiver of payment of fees, costs and court expenses"

U.S. v Sherwood
312 Us 584 1941

"Power of court to make rules of practice gives it no authority to modify or enlarge substantive rights"

B. CONNECTICUT PRACTICE BOOK 506-510 DENY PROCEDURAL DUE PROCESS

This court in an enlightened series of decisions starting with Snaidach v Family Finance, 395 US 337, expanded greatly with Fuentes v Shevlin, 407 US 67, greatly detailed in Mitchell v Grant, 416 US 600 and affirmed again in Di-Chem Chemical v Georgia, 419 US 601 set procedural due process standards under which the lower courts are guided as to necessity for hearing and notice before property rights can be taken away by the state courts.

P.B 506 "Every application for appointment of a rent receiver may be made to the court or in chambers. The court may examine plaintiff or his attorney. Notice of hearing should be given when practical"

On their face the Connecticut rules permit without specified grounds or standards the appointment of a rent receiver without notice or hearing and further to be appointed in chambers upon hearsay representations of plaintiff or his counsel! A far cry from the decisions of this Honorable Court.

As this Court stated in Fuentes v Shevin, 407 US 67 (1972) due process not only ensures "abstract fair play to the individual" but also minimizes "substantially unfair or mistaken deprivations of property" This doctrine of notice and opportunity for a hearing prior to seizure of property represents inherent fairness and is in harmony with basic precepts of Anglo-American jurisprudence.

C. CONN PRACTICE BOOK 506-510 SHOULD BE DECLARED UNCONSTITUTIONAL & VOID FOR DENIAL OF A "MEANINGFUL HEARING"

It is also well established that the opportunity to be heard required by due process"must be granted at a meaningful time and in a meaningful manner"

Armstrong v Manzo
380 US 545 (1965)

This principle is so fundamental that it was promptly incorporated into the 5th Amend. and later into the 14th Amend to the U. S. Constitution. Due process is so entrenched in our tradition and conscience that in its early decisions this court relied upon natural law to find that an individual's right to notice and opportunity to be heard was essential to a court's jurisdictional power to adjudicate See, e.g. Harris v Hardeman, 55 US 334 (1852) Hollingsworth v Barbor, 29 US 466 (1830) The Mary 13 US 126 (1815)

In its recent decisions this Court has clearly continued to reinforce this constitutional requirement of prior notice and meaningful hearing in a variety of contexts. Fuentes, supra, Bell v Burson, 402 US 535 (administrative suspension of drivers liscence) Boddie v Conn 401 US 371 (access to courts), Wisconsin v Constantineau 400 US 433 (public termination of drinking priviledges) Goldberg v Kelly, 397 US 254 and Wheeler v Montgomery 397 US 280 (termination of welfare) Mitchell v Grant, 416 US 600 (seizure of household articles, Di-Chem Chemical v Georgia 419 US 601 (seizure of abank account)

In this action the appellant was denied a meaningful hearing by a motion without any grounds, by hearsay by counsel and be rigid centuries old practice to "give property to the bank"

D. OPERATION OF RENT RECEIVERS UNDER P. B. 506-510 RUTHLESSLY VIOLATES FEDERAL PROHIBITION AGAINST IMPAIRMENT OF CONTRACTS

U. S. Constitution Article 1 Sec 10 Cl 1

"No state shallmake any law.....
impairing the obligation of contracts"

In this action the language of P.B. 506-510, Appendix D1-2, is barren of any language to prevent or to protect the innocent party in state court from impairment of his mortgage contract terms. This appellant counter-claimed for breach of the mortgage contract by bank starting a rent receivership in violation of the terms of the mortgage note and deed when there was "no default"

Later using losses it created the appellee bank secured a court appointed rent receiver who has not followed any of the requirements of the mortgage contract as follows:

1. Mortgage calls for bank to collect rents in same manner and to same extent as mortgagee
2. Mortgage contract calls for monthly reports but none made for 2 years
3. Mortgage calls for bank to make good missing rents and pay taxes, oil, etc., during its rent receivership but bank paid none of these.
4. Appellant "witch-hunted" in state courts for seeking to affirm his mortgage contract rights
5. State Court punished appellant by its order ..."not to walk or talk" after complaints from appellant

This action should be reversed by this court and remanded for further proceedings on the counter-claims consistent with Art Sec 10 Clause 1 of the U. S. Constitution.

Allied Structual Steel v Spannus
438 US 234 1978

"The contract clause of the federal constitution imposes limits on the power of the state to abridge existing contractual relationships"

E. "SHORT CALENDAR" PRACTICE OF CONN. STATE COURTS PERMITTING APPOINTMENT OF RENT RECEIVERS ON "HEARSAY" IS REPUGNANT TO THE CONSTITUTION.

It is no secret and well documented that Connecticut alone of the fifty states follows a unique set of rules of practice called the Connecticut Practice Book. One of its features is the "short calendar" where weekly motions are heard on a computer printed calendar and almost 90% of which are disposed of without testimony on "hearsay" alone.

Few if any of the litigants are ever present and few if any know that their fundamental federally protected rights to due process of law are abridged by their attorneys without so much as a oral waiver.

It is customary in courts that abridge federal rights to provide for a written waiver of the parties to give the courts jurisdiction to do so but the Conn. Practice Book and the practice is barren of waivers.

Practice Book 206 -"All motions must be placed on short calendar list"

Practice Book 506 -"The court may examine plaintiff's attorney and thereupon appoint a rent receiver"

Carnley v Cochran
369 US 506 (1962)

"Presuming waiver from a silent record is impermissible. Anything less than an intelligently and understandably made waiver is not waiver"

5th Amend to U. S. Constitution

"Nor shall any state deprive any pesson of property without due process of law"

Due process in both state and federal forums has come to mean the right to confront witnesses with sworn testimony, to introduce evidence according to the equally administered rules and prohibits decisions made on hearsay testimony such as is used on Conn. Short Calendars in the appointment of rent receivers as set out in P B 506.

Welch v ZBA
158 Conn at 212 "Due process guiding rule is no one may be deprived of adequate notice as to what will be heard, of the right to produce relevant witnesses or to cross-examine witnesses"

It is clear P.B. 506 denies due process by permitting appointments of rent receivers by hearsay testimony of plaintiff's counsel.

II. CONNECTICUT PRACTICE BOOK SECTIONS 506-510 ARE UNCONSTITUTIONAL AS APPLIED BY THE STATE COURTS

A. THE APPOINTMENT OF INEXPERIENCED ATTORNEYS WHO CAUSE GREAT LOSSES AND CHARGE BAR ASSOCIATION FEES IS A VIOLATION OF THE SHERMAN ANTI-TRUST ACT

The anti-trust violations were not raised in the state courts as these laws passed by Congress give exclusive jurisdiction over violations to the federal courts.

The federal statute involved, the Sherman Antitrust Act, Title 15 USC 1, provides in pertinent part:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states is declared illegal"

In the trial court the appellant offered the services of a competent experienced property manager at the customary rate of $150/month for all required services. The trial court rejected this offer and instead appointed an attorney-friend of the bank lacking experience who caused by neglect and waste over $100,000 in lost rents, greatly depreciated the property, despite intense inflation in values and charged and received the sum of $60/hour as "attorneys fees".

The policy of the Superior Court of Connecticut is well understood and has been explained many times and is believed to date back many decades prior to the Sherman Anti-Trust Act.

> "The judges appoint attorneys, members of the same Conn. Bar Association they are members of in preference to property managers as an easy way to give them a high payment for doing nothing. The property owner has no recourse since if he protests the Court has discretion" to "give the property to the bank" under "strict foreclosure"

This historic, barbaric system festering in Connecticut since Colonial times not only violates the Sherman Anti-Trust Act but the Magna Charta, father of freedoms, as well.

Magna Charta 1215 -"To no one will we sell, to no one will we deny equal justice under the law"

The unwritten agreement between the judges and the Conn. Bar Association to charge high hourly fees reserved for complex trial work for routine administrative work ordinarilly charged on a 5% of gross collections basis is an extreme violation of anti-trust law.

This court's decision in Parker v Brown, 317 US 341 (1943) has immunized state action from the anti-trust act where the state action is carried out pursuant to lawful legislative command.

However, in 1975 this Honorable Court expanded the frontiers of anti-trust illegality to include the learned profession of lawyer on grounds they are heavilly involved in interstate commerce and subject to anti-trust law. Rejecting minimum fee schedules maintained by the Virginia State Bar under rules of practice issued by the Virginia Supreme Court this court held mimimum fees "classic price fixing"

Goldfarb v Virginia State Bar
95 Sup Ct 2004 6-16-75

However, this is believed to have been a nation wide "anti-Goldfarb" backlash" where the state and county bar associations concealed under the rug the published mimimum fee schedules and instead shifted to a "maximum fee" for complex trial work and by imposing this maximum fee on routine clerical work, on overhead types of work and especially on non-legal work such as rent receiverships still achieve the minimum fee results despite the Goldfarb, supra, prohibition.

The key language in Goldfarb bringing this oompdaint of anti-competitive actions in Conn. is selecting attorneys for rent receivers and in paying "attorneys fees" for non legal work comes as follows:

Goldfarb supra " The threshold inquiry in determing if an anti-competitive activity is state action of the type the Sherman Act was not meant to proscribe is whether the activity is required by the state acting as sovereign."

Parker v Brown, supra at 350-352
Continental Ore Co v Union Carbide
370 US 690, 706-707 (1962)

However, the state imposed action shield is not available to the Appellee in this action as the appointment of rent receivers is not a legislative act but comes under PB 506 - 510 created by the Connecticut Supreme Court under its rule making powers under GS 51-14. The modifying of substantive rights is expressly prohibited by GS 51-14 so the anti-trust violation complained of herein is further unlawful under state law being in violation of GS 51-14.

GS 51-14 "Such rules shall not abridge, enlarge or modify any substantive right nor the jurisdiction of any of the courts"

B. FAILURE OF STATE COURTS TO EXERCISE "CONTROLS" OVER THE RENT RECEIVERS MAKES IT ILLEGAL AND VOID.

There can be no doubt but that the rent receivership appointed in May 1977 when the Memorandum of Decision is dated January 1978 makes it crystal clear that this is a "pre- judgment remedy". While this court has approved pre-judgment remedies even without notice or hearing it has held it vital that certain preset conditions exist and that the seizure be kept under close controls by an impartial state official.

The facts of this case are glaring testimony that the controls attempted to be exercised by this appellant in June 1977, in October 1977 and in Jan. 1978 all were summarilly dismissed, the appellant was "witch-hunted" with an order ...."not to walk or talk"..... and threatened with "strict foreclosure".

This court has made it clear what is required under equal protection between debtor and creditor in a series on consistent decisions mostly in affirming of state law provisions that give such protection. Perhaps the one most relevant to the facts of this action is Mitchell v Grant, 416 US 600.

Some of the features approved in Mitchell, supra, that are lacking in Conn P.B. 506-510.

1. Debtor may regain property by posting own bond (also approved in Fuentes, supra)
2. Failure of plaintiff to prove claim property reverts to defendant
3. Debtor may seek speedy dissolution of seizure or property
4. Debtor may sue for damages and attorneys fees for wrongful seizure in same action

Mitchell P 618 "The Louisiana system protects the debtor in every way"

By comparison the Connecticut system has no built in protection for debtor but the wolf called "strict foreclosure" is always lurking with discretion to "give the property to the bank". Some signifcant defects of the Connecticut system are:

1. Debtor denied adequate bond
2. No provisions for protecting against impairment of contracts
3. No provisions for repairs & heat
4. No provisions for protecting owner as to property not included in the mortgage
5. No provisions for "speedy" hearing in emergencies
6. Total lack of any provision to give debtor equal protection to creditor
7. Lacks monthly reporting by receiver
8. Lacks "meaningful" reporting

C. CONN. STATE COURTS "WITCH HUNT" PROPERTY OWNERS WHO PROTEST RUTHLESS VIOLATION OF FEDERAL RIGHTS.

The appendix B6-10 shows the third series of motions by appellant to secure state court control over the negligent rent receiver with all motions denied.

The Appendix B5 shows the order ..."not to walk or talk" ... made without motion, without notice or hearing as punishment for first set of motions to seek state court control over the rent receiver.

"Witch-hunting" is centuries old in Conn and going on today at an alarming fashion. With no commercial mortgage money available anywhere in the state up to four years the property owners have no means of escape or relief. It is estimated approximatly one half billion dollars in real property in Conn is being lost to the banks each year by techniques that shock the conscience and repudiate the federal constitution and the amendments thereto.

1st Amendment - "Congress shall make no law abridging freedom of speech"

Judge Sponzo's order of June 24, 1977 abridged fundamental federally protected rights.

The 14th amendment makes all the amendments binding on the states

People v Smith 254 NW 2d 655 "Freedom of association is "fundamental right" within penumbra of 1st Amendment"

Yauch v State 505 P 2d 1066 "Freedom to communicate ideas is protected by 1st amend."

Winick v Winick 153 Conn 295 "Order without written motion void as without due process

D. RENT RECEIVERS ARE USED FOR AN "ILLICIT" PURPOSE TO DEPRECIATE MARKET VALUE SO BANK CAN SEIZE EQUITY VIA "STRICT FORECLOSURE"

Connecticut alone of the fifty states practices a unique system of "strict" foreclosure where if representations can be made to state court by bank that the market value is close to the mortgage debt the Court..."has discretion"..... "to give the proporty to the bank". This handy system has no constitutional basis but is claimed to be in the interests of saving time of the attorney in court. Needless to say it has been and can be easilly abused by creditor banks who via a netwerk of branches so dominate the law offices and appraisers by the volume of work given out especially in times of intense inflation or intense depression that the banks literally control every word said in court.

This sytem of appraisal without standards was in small part reviewed and rejected on constitutional grounds by the Connecticut Supreme Court in Feb 1979

Chestnut Estates v Society for Savings
50 CLJ 32 175 Conn ___

> "We now decide that GS 52-14 is unconstitutional because it does not comply with the 14th Amendment to U. S. Constitution"
>
> "Without a statutory provision mandating a hearing before the Court defendant is deprived of his essential constitutional right to present evidence of value and to cross-examine witnesses"

Even more to the point decided by the Appellate Session just before Society, supra, and certified to the Conn. Sup Ct was Burke v First Federal Savings, AS 463, August 1978 ___ A 2d ___ . The Burke case expressly rejected an appraisal by three appraisers who came out with a value of $107,000 by overlooking a number of significant value features that brought market value to $351,000. The Burke, supra, action dramatizes how easy it is for a bank to use unfair or dishonest appraisal methods under "strict foreclosure" in Conn. and later reap great profits.

E. CONN STATE COURTS DISREGARD APPRAISAL DUE PROCESS STANDARDS SET AND USED BY THE FEDERAL COURTS

There is no doubt but that the state courts have no standards for appraisal of property for foreclosure. While GS 52-14 was stricken down as unconstitutional in Society, supra, it left untouched on the books companion evils GS 49-17, 49-24 and 49-25 all using the same appraisal techniques.

However, in a line of cases going back to railroad re-organization days This Honorable Court set as a standard for appraisal to meet due process as ..."the going concern"... method.

Reconstruction Finance Co v Denver & Rio Grande Western RR Co
328 US 495 1947

> "That court approved valuation of debtor reached by use of present and prospective earnings. The soundness of these conclusions is fully supported by Western Pacific and Milwaukee"

See also Ecker v Western Pac RR Co
318 US at 477 (1946)

Group Investors v Milwaukee RR
328 US 539-541 (1943)

Famed Judge Norton of Georgia Bankruptcy Court, author of Real Property Arrangments; adoptedthis method.

In re Pine Gate
3 Bankr Ct 302

"Determination of value by appraisal most difficult and due process necessary under 5th Amend. the court requested briefs on method of evaluation and scheduled hearing"

"Adequate protection received from an appraisal based on determination of value as a "going concern" "

5th Amendment - "No person shall be deprived of property without due process of law"

It is this lack of due process standards in Connecticut to guide the appraisal of real property that has led to development and retention over many decades of practices by bank's attorneys to appoint rent receivers, to depreciate property, to appear in court ever procaliming lower and lower values for the property in the hopes by "strict foreclosure" the court can exercise its "discretion" and "give the property to the bank"

THE CONNECTICUT SUPREME COURT HAS A SELF ADMITTED HISTORY OF "NOT UNDERSTANDING" CONSTITUTIONAL RIGHTS

In 1971 this same appellant brought up on appeal similar issues in both state and federal forums challenging on constitutional grounds the levying of pre-judgment attachments on real estate without notice or hearing.

The Conn. Supreme Court dismissed this challege in Bitonti v Tucker, 162 Conn 626.

" we have considered matters raised by defendant as far as they could be understood.

With stunning timing, this Honorable Court only weeks later "understood" the "due process" claims and acting on identical briefs paragraph for paragraph granted certiorari in Tucker v Maher, 405 US 1052. On remand hearing had before a Three-Judge District Court but before decision former Governor Meskill signed into law PA 73-431 the new Pre-Judgment Remedy Act that eliminated the statutes complained of.

In this action once again (See A9) the Conn. Supreme Court has disregarded the federal issues including the denial of due process in award of attorneys fees....

"as for defendant's other claims.... as far as they can be understood..."

With stunning timing weeks later the Hon. 2nd C.A. in HNB & T v Tucker No 79-8088 "understood" and reversed and vacated the very fees approved by the Connecticut Supreme Court.

IV CERTIORARI SHOULD BE GRANTED AND THIS ACTION REMANDED FOR RECONSIDERATION OF FEES IN LIGHT OF HON. 2nd CA REVERSAL OF ORDER INCLUDED BY STATE COURT

Whether it had any legal basis for so doing the state court was most kind to the bank by including costs and attorneys fees for "bankruptcy court ". These fees and costs were the same ones generated by the foreclosure action in the state court and a duplication of fees. In the words of the bankruptcy court...."whichever judgment you pay first satisfies both"

Both state and federal orders taken on appeal and in Sept 1979 the Conn Sup Court upheld the fee award and in Oct 1979 the 2nd CA reversed and vacated the same fee award as "without foundation " See E 1.

Since Goldfarb , supra, there is believed to have been an evasion of the minimum fee thrust of that decision most bar associations hinding their schedule of minimum fees under the rug but in court applications made charging the maximim for highly skilled trial work for all types of time including clerical, overhead and non-legal such as rent receiverships.

The 5th CA, the 7th CA, the 9th CA and now the 2nd CA have rejected as an "abuse of discretion" and without due process the award of attorneys fees based on hours billed.

Mirabal v GMAC
576 F 2d 729
7th CA 6-6-78

"This circuit has held it to be an abuse of discretion to award attorneys fees based on hours x billing rate"

In Re USA Motel Corp
Bankruptcy Ct Vol I P 1343
9th C.A.

"We find attorneys fees grossly excessive. His services of questionable benefit to Debtor. We hold $62.50 grossly excessive and reduce to $35/hour"

The 5th CA has been most explicit holding there to be two abuses of discretion by the trial court, first in awarding fees based on hours spent, and second in not showing the details upon which the fee award is based. The 5th CA wrote enlightened opinion as to just what factors must be considered in award of fees and has recently vacated award made without showing the basis.

Johnson v Georgia Hiway Express
488 F 2d 714 1974

Fletcher v Davis 48 LW 2070

CONCLUSION

This court shrld summarily reverse the decision of the Connecticut Supreme Ct for reconsideration in light of equal debtor-creditor protections set out in Mitchell v Grant and in light of fees vacated by 2nd CA in HNB & T Co v Tucker or in the alternative, probable jurisdiction should be noted.

Respectfully Submitted:

STANLEY V. TUCKER

APPENDIX A - Orders by Conn. Supreme Ct.

STAY ORDER

No 8957

Hartford National Bank & Trust Co — Supreme Court

vs. — STATE OF CONN.

Stanley V. Tucker, et al — Nov 1, 1979

O R D E R

The Defendant's Motion for Stay Pending Petition for Certiorari having been presented to the court it is hereby

ORDERED that a stay is granted for thirty (30) days foom date of this order

s/
ASST CLERK OF SUP CT.

ORDER DENYING RE-HEARING

No 8957

Hartford N B & T Co — SUPREME COURT

vs. — STATE OF CONN

Stanley V. Tucker, et al — Sept 19, 1979

O R D E R

The Defendant's Motion to Reargue having been presented to the court it is hereby

ORDERED Denied. s/
Asst Clerk Sup Ct

MEMORANDUM OF DECISION ON APPEAL

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SUPREME COURT

April Term, 1979

HARTFORD NATIONAL BANK AND TRUST COMPANY
v. STANLEY V. TUCKER ET AL.

LOISELLE, BOGDANSKI, LONGO, PETERS and SIDOR, Js.

Argued April 10—decision released July 24, 1979

Action for the foreclosure of a mortgage, brought to the Superior Court in Litchfield and tried to the court, *Sponzo, J.;* judgment for the plaintiff, from which the named defendant appealed to this court. *No error.*

Stanley V. Tucker, pro se, the appellant (named defendant).

Neil E. Atlas, with whom, on the brief, was *Paul A. Hudon,* for the appellee (plaintiff).

SIDOR, J. The defendant, Stanley V. Tucker, has appealed from a judgment for foreclosure by sale, and for reimbursement to the plaintiff, Hartford National Bank and Trust Company, of certain necessary expenses and for attorneys' fees. The trial court concluded that the defendant was in default on his note which was secured by a mortgage on property owned by the defendant in Torrington, Connecticut.

The facts found by the trial court are as follows: On February 24, 1966, the defendant Stanley V. Tucker executed a promissory note to the plaintiff, Hartford National Bank and Trust Company, which was secured by a mortgage of premises known as No. 711 East Main Street, Torrington, Connecticut. By the note Tucker agreed to pay to the bank the sum of $235,000 with interest at the rate of 6 percent per annum upon the unpaid balance, payable in equal monthly installments of $1684.95 over a period of twenty years. The note provided that, in the event of default in the payment of the monthly installments *or* in the payment of taxes or municipal assessments, for a period of thirty days after any of the same would become due and payable, the whole of the note should immediately become due and payable at the option of the holder. In the event of default, the note further provided for payment by Tucker of all costs of collection, including reasonable attorneys' fees incurred in any action brought to collect on the note or to foreclose the mortgage securing it, or to sustain the lien of the mortgage. Also on the same day Tucker executed a conditional assignment of rents in favor of the bank.

As of October 31, 1975, Tucker was current in his payment of principal, interest and insurance premiums. On December 23, 1975, however, Tucker was notified formally by the bank that foreclosure of the mortgaged premises would be instituted because of a default arising from Tucker's failure to pay taxes due the city of Torrington. The foreclosure proceedings were instituted by the bank on January 16, 1976. At that time the amount of Tucker's default in the nonpayment of taxes to the city of Torrington was alleged to be approximately $29,000 for the lists of 1973, 1974 and 1975. After an amended return was filed, the defendant filed an answer and six special defenses and five counterclaims.

On October 21, 1975, the bank had exercised its right to collect rents due from the mortgaged premises and continued to exercise this right until April 30, 1976, through its agent Robert C. White. Between November 1, 1975 and April 30, 1976, Tucker interfered with the collection of rents by the agent. From late 1976 through early 1977, Tucker delivered three checks, each in the amount of the monthly mortgage payments, to the bank. The first two checks, tendered on December 15, 1976 and on March 16, 1977, were forwarded to the bank's attorney who placed them in his client's fund. The last check, delivered on April 28, 1977, was placed in the bank's general escrow account and was not applied to Tucker's loan.

By charter, the city of Torrington appoints its tax collector under a bidding process. The tax collector guarantees payment of all taxes and he is subrogated to all rights of the city in the collection of delinquent taxes. As of November 15, 1977, the city of Torrington was owed $42,207.21 in unpaid taxes.

The trial court also found that the unpaid principal balance on the promissory note was $163,909.21, and that the interest due through November 29, 1977, amounted to $21,281.42. In addition, the bank spent the following sums in relation to the mortgaged premises: (1) $3173.12 for fuel oil; (2) $180 to remove two trees; (3) $432.04 costs and $1196 attorneys' fees in bankruptcy proceedings commenced by Tucker; (4) $5864.50 in attorneys' fees for various other legal proceedings instituted by Tucker; and $1400 in attorneys' fees for the trial in the instant case, which ended on December 2, 1977.

The trial court found the issues on the complaint and counterclaims for the plaintiff. The court concluded that Tucker was in default on the note as a consequence of his arrears in the payment of taxes due the city of Torrington. Taxes were due in the amount of $42,207.21 for the tax years of 1973, 1974, 1975 and 1976. The unpaid balance of the mortgage due the bank on default was found to be $163,909.21, and interest due the plaintiff came to $21,281.42 plus a per diem rate to date of payment. The court ordered Tucker to reimburse the bank for the expenses, costs, attorneys' fees and appraiser's fees, and, to cover the unpaid balance and interest on the note, ordered the sale of the mortgaged premises at public auction. The defendant requested foreclosure by sale and participated in the selection of the committee that was to conduct the sale. Thereafter, this appeal was taken.

The defendant has assigned error by the trial court in finding facts set forth in eleven paragraphs, and in refusing to find the facts set forth by the defendant in fifty-eight paragraphs of his draft finding. There is no discussion of these claimed errors in the defendant's brief. "Normally the failure to brief errors assigned is deemed an abandonment of those points. *Lovett* v. *Atlas Truck Leasing,* 171 Conn. 577, 580, 370 A.2d 1061 (1976); *Housing Authority* v. *Dorsey,* 164 Conn. 247, 248–49, 320 A.2d 820, cert. denied, 414 U.S. 1043, 94 S. Ct. 548, 38 L. Ed. 2d 335 (1973); Maltbie, Conn. App. Proc. § 327." *Stanton* v. *Grigley,* Conn. (40 Conn. L.J., No. 47, pp. 6, 7) (1979). The defendant did, however, print an appendix, portions of which could be read to support these claims; see *Dana-Robin Corporation* v. *Common Council,* 166 Conn. 207, 210n, 348 A.2d 560 (1974); however, we see no reason to correct or to add to the trial court's finding. Many of the draft findings are not supported by evidence printed in the appendix; Practice Book,

1978, § 3040 (c); others are not material, admitted, or undisputed facts; *William G. Major Construction Co.* v. *DeMichely,* 166 Conn. 368, 370n, 349 A.2d 827 (1974); and the rest are merely rewordings of the court's findings and will not be substituted for that language. *Baker* v. *Baker,* 166 Conn. 476, 479n, 352 A.2d 277 (1974). The findings attacked are amply supported by the plaintiff's appendix and must stand. *Stanton* v. *Grigley,* supra, 7.

The remaining assignments of error, as briefed, ostensibly cover nine issues, some of which overlap and others of which contain multiple claims. Moreover, these claims mix the relevant and irrelevant, issues of fact and of law, and are otherwise difficult to disentangle. In accordance, however, "with our established policy to allow great latitude to a litigant who, either by choice or necessity, represents himself in legal proceedings, so far as such latitude is consistent with the just rights of any adverse party, we have carefully examined and considered each of the claims of the defendant so far as it is possible to understand them." *Bitonti* v. *Tucker,* 162 Conn. 626, 627, 295 A.2d 545, cert. denied, 409 U.S. 851, 93 S. Ct. 62, 34 L. Ed. 2d 94 (1972). *Connecticut Light & Power Co.* v. *Kluczinsky,* 171 Conn. 516, 519–20, 370 A.2d 1306 (1976).

As a threshold matter, we have carefully analyzed the defendant's claim that the trial court lacked jurisdiction, because a want of jurisdiction in that court would eliminate our authority to consider the issues raised on this appeal. *Hartford Kosher Caterers, Inc.* v. *Gazda,* 165 Conn. 478, 486–87, 338 A.2d 497 (1973). Before trial the defendant raised by a plea in abatement,[1] which was sustained, a "defect" in the process which, he claims now, the court allowed the plaintiff to amend at a time beyond the limit permitted by General Statutes § 52-48.[2] This claim is without merit. The defect of

which the defendant complains is the omission of his apartment number in the address, which was correct as to street and building number. The amended return, which included the apartment number, was not filed until August 13, 1976, almost seven months after the date of process, January 30, 1976. The defendant claims that the plaintiff's failure to file the amended return within the sixty-day limit set forth in § 52-48 effectively terminated the court's jurisdiction.

It is not the policy of our courts to interpret rules and statutes in so strict a manner as to deny a litigant the pursuit of its complaint for mere circumstantial defects. *Johnson* v. *Zoning Board of Appeals,* 166 Conn. 102, 111, 347 A.2d 53 (1974); *Greco* v. *Keenan,* 115 Conn. 704, 705, 161 A. 100 (1933). Indeed, § 52-123 of the General Statutes protects against just such consequences, by providing that no proceeding shall be abated for circumstantial errors so long as there is sufficient notice to the parties.[3] There is no doubt in this case that the defendant was apprised of the contents of the complaint by successful service. The plaintiff submitted an affidavit by the sheriff reciting that he had made service on the defendant at the proper apartment. The amended return only made the original more specific; it did not deny the defendant his

[1] Practice Book, 1963, § 93. As of 1978, pleadings addressed to the court's jurisdiction are called motions to dismiss. Practice Book, 1978, § 142.

[2] "[General Statutes] Sec. 52-48. RETURN DAY OF PROCESS. Process in civil actions, including transfers and applications for relief or removal but not including summary process actions, if brought to the superior court or to the court of common pleas may be made returnable on any Tuesday in any month and all process shall be made returnable not later than two months after the date of such process. . . ."

[3] "[General Statutes] Sec. 52-123. CIRCUMSTANTIAL DEFECTS NOT TO ABATE PLEADINGS. No writ, pleading, judgment or any kind of proceeding in court or course of justice shall be abated, suspended, set aside or reversed for any kind of circumstantial errors, mistakes or defects, if the person and the cause may be rightly understood and intended by the court."

right to notice of the complaint's allegations. Whether or not the plea in abatement of the defendant here should have been sustained; see *Corden* v. *Zoning Board of Appeals,* 131 Conn. 654, 658, 41 A.2d 912 (1945); it is clear that an amendment could be entertained beyond the sixty-day limit to cure the minor defect in the writ, and without requiring a new service of process under General Statutes § 52-72. Section 52-72 requires the new service of the writ and process when they are amended only to correct process "which has been made returnable to the wrong return day *or is for any other reason defective* . . ."[4] (Emphasis added). The purpose of this statute is to provide for amendment of otherwise incurable defects that go to the court's jurisdiction. 1 Stephenson, Conn. Civ. Proc. § 106 (2d Ed.). Those defects which are merely voidable may, in the trial court's discretion, be cured by amendment, and do not require new service and return date, so long as the defendant was not prejudiced. 72 C.J.S., Process, § 107. Nor does General Statutes § 52-54,[5] which requires abode service, create a lack of jurisdiction in all cases where the apartment number is omitted. As stated in *Clover* v. *Urban,* 108 Conn. 13, 16, 142 A. 389 (1928), "[t]he chief purpose of this requirement [of abode service] is to ensure actual notice to the defendant that the action is pending. *Grant* v. *Dalliber,* 11 Conn. 233, 237; *Clegg* v. *Bishop,* 105 Conn. 564, 569, 136 Atl. 102." This purpose was accomplished well before the original return date and thus there was no need to reacquire jurisdiction by new service under § 52-72.

Upon determining that the trial court had jurisdiction, we reviewed the defendant's other claims of error, so far as they are severable from his wholesale attack on the factual findings of the court. The interpretation of testimony is the sole province of the trier and therefore objections to the findings which the defendant wove into his claims of law will not be discussed. We cannot retry the case. *Abbott* v. *Bristol,* 167 Conn. 143, 146, 355 A.2d 68 (1974); *Frechette* v. *John Meyer of Norwich, Inc.,* 164 Conn. 559, 560, 325 A.2d 286 (1973).

[4] Section 52-72, in relevant part, reads: "[General Statutes] Sec. 52-72. AMENDMENT OF PROCESS. Any court shall allow a proper amendment to civil process which has been made returnable to the wrong return day or is for any other reason defective, upon payment of costs taxable upon sustaining a plea in abatement. Such amended process shall be served in the same manner as other civil process and shall have the same effect, from the date of such service, as if originally proper in form. . . ."

[5] "[General Statutes] Sec. 52-54. SERVICE OF SUMMONS. The service of a writ of summons shall be made by the officer reading it and the complaint accompanying it in the hearing of the defendant or by leaving an attested copy thereof with him or at his usual place of abode. When service is made by leaving an attested copy at the defendant's usual place of abode, the officer making service shall note in his return the address at which such attested copy was left."

As for the defendant's other claims, insofar as they can be understood, we are satisfied that the trial court's conclusions are supported by its findings. *Stanton* v. *Grigley,* Conn. (40 Conn. L.J., No. 47, pp. 6, 7) (1979); *West Haven* v. *United States Fidelity & Guaranty Co.,* 174 Conn. 392, 398, 389 A.2d 741 (1978); *Bitonti* v. *Tucker,* 162 Conn. 626, 627, 295 A.2d 545 (1972); Maltbie, Conn. App. Proc. § 165.

There is no error. The case is remanded to the Superior Court for the setting of a new date for a public sale of the mortgaged premises and other necessary formalities not inconsistent with this opinion.

In this opinion the other judges concurred.

APPENDIX B - Motions & Orders in Trial Court

MOTION FOR APPOINTMENT OF RECEIVER OF RENTS

The Plaintiff in the above entitled action respectfully moves this court to appoint a Receiver of Rents.

Filed March 11, 1976

NEIL E ATIAS

O R D E R

The above motion having been presented to the court it is herby ordered granted.

Attorney Edward W Manasse is appointed reciever of rents. Bond is $5,000.00

s/ MARTIN, Judge

Motion to Declare Sections 427 and 430 of the Practice Book and GS 52-504 Unconstitutional and Void

The Defendant, STANLEY V. TUCKER, moves this court for its order declaring PB 427 and 430 and GS 52-504 Unconstitutional and void upon grounds as follows:

1. The said sections purport to permit a court on application of a creditor to seize rents from property and make no provision for

the enforcement of creditor and debtor duties and rights as set forth in the UNIFORM COMMERCIAL CODE OF CONNECTICUT.

2. The seizure of property or rents from property without due process of law has been prohibited by a series of decisions of the United States Supreme Court and the Connecticut Legislature in response enacted the Pre-Judgment Remedy Act, GS 52-278 a-m, prohibiting the very type of seizure permitted by the sections complained of.

3. The sections PB 427 & 430 and GS 52-504 are so vague and uncertain as to: intended meaning that ordinary men of average intelligence could easily read said matter and come up with different intended meanings.

4. The sections PB 427 & 430 and GS 52-504 fail to make provision for special conditions and strict supervision as mandated by decisions of the UNITED STATES SUPREME COURT.

STANLEY V. TUCKER

Filed June 10, 1977

O R D E R

The foregoing motion is denied.

By The Court (Sponzo,J.)

Paul F. Brown,
Clerk

June 10, 1977

BOND OF RECEIVER

KNOW ALL MEN BY THESE PRESENTS, That We, Edward W. Manasse of Torrington in the County of Litchfield and State of Connecticut, as principal, and G. M. Littlefield of Torrington in said County and State, as surety, are holden and firmly bound, jointly and severally, unto the State of Connecticut in the penal sum of $5,000.00 lawful money of the United States to be paid to said State of Connecticut, to which payment well and truly to be made and done, we, the said Edward W. Manasse and G. M. Littlefield, bind ourselves, our heirs, executors and administrators, each and every of them, firmly by these presents.

The condition of this obligation is such that whereas in the action of the Hartford National Bank & Trust Co. v. Stanley V. Tucker, et al, now pending in the Superior Court for Litchfield County, the above named Edward W. Manasse, has been appointed receiver of rents of the defendant for property located at 711 East Main Street, in Torrington, County of Litchfield, State of Connecticut, now therefore if the said Edward W. Manasse shall faithfully perform his duties under such appointment then this obligation shall be void, otherwise to be and remain in full force and effect.

IN WITNESS WHEREOF, We the said Edward W. Manasse and G. M. Littlefield, hereunto set our hands and seals at Torrington this 3rd day of May, 1977.

Filed May 4, 1977

Witness:

Nancy A. Bube — Edward W. Manasse L.S.

Jaye H. Lawson — G. M. Littlefield L.S.

OBJECTIONS TO THE BOND OF THE RECEIVER

The defendant, STANLEY V. TUCKER, hereby objects to the bond of the receiver, EDWARD W. MANASSE, on grounds:

1. Said bond was filed without giving notice to Defendant as required by law.

2. Said bond is defective being one of Mr. Manasse's law associate as Surety and the security therefore is dubious, speculative and subject to being dissipated at any time without notice or hearing.

3. As a minimum a proper bond should be:

   a. By local well recognized corporate surety

   b. Cash or certified check posted with Clerk of Court

   c. Have notarized statement by certified Public Accountant as to balance sheet and income/expense statement of both Principal and Surety.

4. While Receiver started collecting rents by mails on May 4th, 1977 I first saw a copy of bond in Court Files on June 16th, 1977 and never received notice from Receiver.

Filed June 21, 1977 STANLEY V. TUCKER

O R D E R

The foregoing Objections are hereby ORDERED OVERRULED.

June 24, 1977 THE COURT (Sponzo,J.)

ORDER June 24th, 1977 - Forbidding Defendant From Going On Premises & From Talking to Tenants

THE COURT - In the order I am making today, Mr Tucker, and you better listen carefully, you are not to go on the premises and you are not to go on the premises, and you are not to contact, either by person, by mail, by telephone, or anyother way, any of the tenants on those premises.

Do you understand my order?

MR TUCKER - Your Honor, one of those tenants has started work in the building next door, and has been working for about three months off and on. He's in the process of doing carpentry, painting, and its only partially completed.

THE COURT - Do you understand my order?

My order is that you are not to make contact with them in connection with anything pertaining to the subject premises.

B 6

MOTION FOR TERMINATION OF RENT RECEIVER

The Defendant moves this court for its order terminating the Rent Receivership of Edward W Manasse on grounds great waste and losses have developed eroding the equity of Defendant as follows:

1. Report shows "counter-feit bills and receipts"
2. Rent losses over $21,000 show on receivers report
3. Appraiser testified in court as to waste and depreciation of $85,000 in market value since receiver took over.

Jan 24, 1978 STANLEY V. TUCKER

O R D E R

After hearing and good cause appearing the foregoing motion is ORDERED denied.

THE COURT

s/_____
MARTIN, Judge

May 15th, 1978

B 7

MOTION FOR FORFEITURE OF RECEIVERS BOND

The Defendant moves the court for its order forfeiting or calling the bond to be deposited in cash with the Clerk of the Court to make good the theft, counter-feits or frauds and / or losses in rents and in expenses due to the negligence and waste or mismanagment caused by rent receiver, Edward Manasse. Annexed as EX "A" is transcript in Bankruptcy Court where that court held attorneys to be incompetent to be rent receivers.

Jan 20, 1978 STANLEY V. TUCKER

O R D E R

After hearing and good cause it is hereby ORDERED that the motion be denied.

THE COURT

May 15, 1978 s/ MARTIN, Judge

B 8

MOTION FOR INCREASE IN RECEIVER's BOND

The Defendant moves the Court for its order requiring Rent Receiver to post a $970,000, or such sum as Court finds reasonable, cash or corporate surety bond to cover his rent receivership and for good cause as follows:

1. Report shows $713"counterfeit bills"
2. Report shows $21,000 in rents stolen, embezzeled, lost or not collected
3. Testimony by appraiser shows due to waste & negligence since re eiver the market value of property reduced $85,000

Jan 24th, 1978 STANLEY V. TUCKER

O R D E R

After hearing and for good cause the foregoing motion is ORDERED denied.

THE COURT

May 15, 1978 s/ MARTIN, Judge

B 9

OBJECTIONS TO RENT RECEIVERS REPORT

The Defendant objects to each item on the report of the rent receiver on grounds no details as to income or expenses to enable verification and authenticity and shows without court approval expenditu es on "counter-feit" bills. Defendant wrote a month ago to receiver request an explanation and receiver failed to respond or to acknowledge.

Entire report is speculative and each item may be couposed of "counter-feit" bills and fraud or embezzlement.

Jan 24th, 1978 STANLEY V. TUCKER

O R D E R

After hearing and for good cause the foregoing OBJECTIONS are ORDERED overruled.

May 15, 1978 THE COURT

s/ MARTIN, Judge

MOTION TO MODIFY OR VACATE ORDER OF JULY 24th, 1978

The Defendant moves the Court for its order modifying or vacating the order of July 24th, 1978 denying Defendant access to premises or tenants to prevent Defendant from seeing waste and neglect as it developes under rent receiver on good grounds as follows:

1. Approx 15 apts furnished @ $40/mo
2. Furnishing not included in the mortgage or foreclosure
3. Neglect and waste of furniture believed big cause of rent losses
4. Much furniture stolen or damaged
5. No one able to collect rents for furniture with large losses
5. Great waste and neglect under the rent receiver.

The equity of Defendant is being eroded with inadequate bond and it is requested former order to be vacated or modified to permit Defendant access to property and to tenants to protect his equity and to collect furniture rents.

Jan 24th, 1978 STANLEY V. TUCKER

O R D E R

After hearing the motion is ORDERED denied.

THE COURT

May 15th, 1978

S/ Martin, Judge

EXHIBIT A

AGREEMENT FOR PAYMENT OF TAXES

FOR A GOOD AND VALUABLE CONSIDERATION, consisting of the first payment of ONE THOUSAND DOLLARS applicable to January 1976 payment the undersigned hereby agree that all taxes due past and future shall be payable at the rate of $1,000/month starting January 1, 1976 until paid in full on 711 E. Main Street, Torrington, Connecticut.

Any lump sum payments additional to the $1,000/month shall either form basis for new payment agreement or be applied to the taxes outstanding.

This agreement may be terminated by either party with a 90 day notice.

RAYMOND CROVO, TAX COLLECTOR for Torrington, hereby recipts for the payment of $1,000.00 for January 1976.

Dated at Torrington, Conn this 7th day of January 1976

s/ RAYMOND CROVO
TAX COLLECTOR

s/ STANLEY V. TUCKER

MEMORANDUM OF DECISION

In January, 1976 the plaintiff instituted foreclosure proceedings against Stanley V. Tucker on premises located at 711 East Main Street, Torrington, Connecticut. On November 12, 1977 the defendant, Tucker, filed an answer, six special defenses and five counterclaims. The plaintiff filed a reply to the special defenses and an answer to the counterclaims on November 14, 1977. Trial to the court commenced on November 15, 1977 and continued on November 29, 30, December 1 and 2.

In the interval between the institution of the foreclosure proceedings in January, 1976 and the trial of the contested issues in November - December, 1977, the defendant made two unsuccessful appeals to the state Supreme Court as well as an unsuccessful petition for certification to the United States Supreme Court. In addition, the defendant during this same period of time failed in his petition for bankruptcy in the United States District Court. The plaintiff was obliged to pursue its legal remedies in all these proceedings in order to protect its claims in the instant action.

In this action the plaintiff met its burden of proving that the defendant, Tucker, executed a mortgage note and deed in favor of the plaintiff on February 24, 1966. This note provided that said defendant would pay the sum of $25,000 plus interest at the rate of 6% per annum in equal monthly installments of $1634.95 over a period of 20 years. In addition, the note contained a provision that in the event of default in the payment of any monthly installment or in the payment of taxes or municipal assessments on the premises mortgaged to secure the note and continuing for a period of 30 days after any of the same became due and payable, the whole balance would immediately become due and payable at the option of the plaintiff.

At the commencement of this action in January, 1976, the defendant was in default in the payment of taxes to the city of Torrington in the approximate amount of $29,000. This sum represented taxes due on the lists of 1973, 1974 and 1975. There is no merit to the claim of the defendant that no taxes were due the city of Torrington because the city's records indicated payment in full of all taxpayers. The city of Torrington has a unique charter provision that permits an internal arrangement which guarantees payment in full of all taxes by a tax collector who bids on such an arrangement. However, the tax collector is subrogated to all rights of the city and is empowered to pursue all statutory rights accorded to all municipalities. In no way can the defendant claim any benefit from this arrangement and in no way can the security of the plaintiff be jeopardized by such a situation. In January, 1976 there was a default and the plaintiff did exercise its option to demand full payment of the balance of the loan. The defendant has failed to pay the balance of the loan.

The court finds the unpaid principal balance to be $163,909.21 plus unpaid interest through November 29, 1977 in the amount of $21,281.42. The note also provided for the payment of all costs of collection, including reasonable attorney's fees. The court finds that many costs and attorney's fees were incurred prior to the trial, which commenced on November 15, 1977. These costs and fees were incurred because of legal proceedings instituted by the defendant. As recited above, they included two unsuccessful appeals to the state Supreme Court as well as the United States Supreme Court and a petition in bankruptcy.

The court finds that the plaintiff is entitled for these proceedings the following sums:

(1)	Bankruptcy court costs	$ 432.04
(2)	Foreclosure costs	141.41
(3)	Legal fees - Bankruptcy court	1,196.00
(4)	Legal fees - foreclosure action Period 1/16/76 - 10/19/77	5,864.50
	Total	$7,633.95

In addition the court finds that the plaintiff is entitled to the sum of $1400 for reasonable attorney's fees for the trial days of November 15, 29, 30, December 1 and 2, 1977. An appraisal fee of $150 is also allowed for Walter Kloss.

The plaintiff is entitled to the sum of $3173.12 as reimbursement of payment for fuel oil, which was necessary to maintain the premises and the sum of $180 which was incurred as a necessary expense to remove two trees.

The plaintiff is ordered to return to the defendant the following three checks or a sum equal thereto:

December 15, 1976	$1684.95
March 16, 1977	1684.95
April 28, 1977	1684.95

together with the sum of $38.08 which represents the balance remaining from rents collected by the plaintiff pursuant to a conditional assignment of rents agreement.

The defendant has failed to meet his burden of proving the allegations of his special defenses and counterclaims by a fair preponderance of the evidence.

The defendant's motion for foreclosure by sale is granted. The plaintiff offered evidence that the fair value of the subject premises is $290,000 and the defendant offered evidence that the fair value of the premises is $435,000. The court finds that the fair value is higher than the plaintiff's evidence and probably lower than the defendant's evidence and there is a substantial equity remaining in the property after payments of the following sums to the plaintiff.

(a)	Unpaid principal balance	$163,909.21
(b)	Unpaid interest to 11/29/77	21,281.42
(c)	Reimbursement for fuel oil	3,173.12
(d)	Removal of two trees	180.00
(e)	Bankruptcy court costs	432.04
(f)	Foreclosure costs	141.41
(g)	Legal fees - bankruptcy pet.	1,196.00
(h)	" " - foreclosure action prior to 11/15/77	5,864.50
(i)	" " - 11/15/77 - 12/2/77	1,400.00
(j)	Appraiser	150.00
	Total	$197,727.70

As of November 15, 1977 there was due the city of Torrington the sum of $42,207.21 for unpaid taxes.

Accordingly, judgment may enter in favor of the plaintiff. Michael A. Merati of Torrington is appointed to sell the mortgaged premises above described and he shall sell the same as a whole, free and clear of the mortgage herein being foreclosed and of all claims subsequent in right thereto, the holders of which are bound by

this action, at public auction, on the premises on April 15, 1978, at 2:00 p.m., unless, at or before said time, said sum above found to be due upon said mortgage debt, including unpaid principal, interest, reimbursement for expenses, legal fees, costs, interest from date of judgment, costs taxed from date of judgment, such expenses for advertising and for the services of Michael A. Merati as such committee as may have been incurred at the date of such payment, and the cost of the appraisal hereinafter directed, if previously made and returned, all to be taxed by the clerk, be paid to the plaintiff, in which case said sale shall not take place. Michael A. Merati shall advertise such sale by publishing a notice thereof, containing a description of the premises in the Hartford Courant, a daily newspaper printed in Hartford, on April 2, and April 9, 1978, and in the Torrington Register, a newspaper printed in Torrington, on April 1 and April 8, 1978. When such sale shall have been made by Michael A. Merati pursuant to this judgment, he shall execute and submit for the approval of this court a conveyance of the premises to the purchaser and make return of his doings and bring the proceeds of such sale into court. Thomas F. Hogan of Torrington, Walter Kloss of Middlebury and Richard Schlott III of Torrington, disinterested persons, are appointed to appraise said property under oath and make return of their appraisal to the clerk of this court, on or before March 17, 1978. The plaintiff shall be allowed his costs from date of judgment, including the expense of the appraisal, to be taxed and paid out of the proceeds of the sale.

January 27, 1978 s/ SPONZO, Judge

MOTION FOR FORECLOSURE BY SALE

The Defendant, STANLEY V. TUCKER, moves this court, in the event that judgment for foreclosure is granted, for foreclosure by sale with a law date of one year to allow time to clear off the record superfluous liens, to restore the many vacant apartments to rent paying tenants and to re-finance the property. It is vital that the receiver be ended and that Defendant have control of the property to carry out the above objectives.

STANLEY V. TUCKER

Filed November 15, 1977

O R D E R

The foregoing motion is ORDERED GRANTED.

THE COURT (Sponzo,J.)

P. F. Brown
Clerk

December 14, 1977

APPENDIX C:- CONSTITUTIONAL AMENDMENTS

AMENDMENT 5

Criminal actions — Provisions concerning — Due process of law and just compensation clauses.—No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV.—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX D - Connecticut Practice Book Sections Challenged as Void and Unconstitutional

Note - These sections formerly 527 -531 are merely re-numbered without changes in new practice book.

Sec. 504. Receiver of Rents
(P.B. 1963, Sec. 425.)

Sec. 505. ——Applicability of Previous Sections
Sections 485 through 500 shall not apply to receivers of rents.
(P.B. 1963, Sec. 426.)

Sec. 506. ——Appointment
Every application for the appointment of a receiver of rents shall be made in or ancillary to a civil action and may be made either to the court before which such action is pending or, when the court is not in actual session, to a judge in chambers. The court or judge may examine the plaintiff or his attorney and may thereupon appoint a receiver of rents. Notice of the hearing should be given when practical but such appointment may be made without notice if sufficient cause appears.
(P.B. 1963, Sec. 427.)

Sec. 507. ——Bond
No such appointment shall become effective until the receiver shall have filed a bond in such amount as shall have been fixed at the time of his appointment or until said bond shall have been approved by the judge or clerk of the court in which the action is pending; provided that no bond need be required of a bank or trust company. The condition of bonds of such receivers shall be substantially in the following form:

The condition of this obligation is such that, whereas the above named A has by (*court or judge*) been appointed, in an action brought by X against Y, to be receiver of rents of property located in the town of and described as (*describe generally, e.g., No. 93 Maple Street*):

Now, therefore, if said A shall well and truly perform his duties under such appointment, then this obligation shall be void, otherwise in full force and effect.

(P.B. 1963, Sec. 428.)

Sec. 508. ——Discharge

Any party in interest may at any time move for the discharge of the receiver.

(P.B. 1963, Sec. 429.)

Sec. 509. ——Orders

The court in which the action is pending, or the appointing judge, may make such orders for the governance of the receiver as circumstances require. The judge shall certify any order passed by him in chambers to the court in which the action may be pending.

(P.B. 1963, Sec. 430.)

Sec. 510. ——Reports

Such receivers shall file written reports quarterly and at such other times as may be required.

(P.B. 1963, Sec. 431.)

APPENDIX E - Order of the Honorable Second Circuit Court of Appeals Reversing the Connecticut Supreme Ct.

2nd C.A. No 79-8088
_____F 2d _____
October 1979

Hartford National Bank & Trust Co
-v-
Stanley V. Tucker

...."The order granting attorneys fees to Hartford National Bank & Trust Co for services rendered by its counsel, Neil E. Atlas, is hereby vacated as being made without foundation".....

Honorable Circuit Court Justices

Lumbard
Mansfield, C.J.
Meskill